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## Congress of the United States House of Representatives

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HOUSE LEADERSHIP  
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VICE CHAIR, SUBCOMMITTEE ON ANTITRUST,  
COMMERCIAL, AND ADMINISTRATIVE LAW  
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SUBCOMMITTEE ON WATER, OCEANS,  
AND WILDLIFE  
HOUSE SELECT COMMITTEE  
ON THE CLIMATE CRISIS

November 23, 2020

The Honorable Jerrold Nadler  
Chairman  
House Committee on Judiciary  
Washington, D.C. 20515

The Honorable David Cicilline  
Chairman  
Subcommittee on Antitrust, Commercial, and  
Administrative Law  
Washington, D.C. 20515

Dear Chairman Nadler and Chairman Cicilline:

Thank you for your tremendous leadership throughout the 116<sup>th</sup> Congress. As a Freshman Member of Congress and Vice Chair of the Subcommittee on Antitrust, Commercial, and Administrative Law, it has been an honor of a lifetime to work with you on some of the most pressing and vexing issues facing our country, including the Committee's investigation into the state of competition in the digital economy. The Committee's investigation and subsequent report will assist Congress and federal antitrust regulators restore competition in the digital marketplace. In light of its success, I propose that the Subcommittee turn its attention to another sector of our economy that is prone to anticompetitive behavior and failed federal antitrust enforcement – the pharmaceutical industry, particularly the Federal Trade Commission's (FTC's) merger policy in the pharmaceutical sector involving drug acquisitions.

The U.S. healthcare industry has witnessed a steady increase of multibillion-dollar deals, with no evidence of letting up. In the past several months, the FTC has approved acquisitions between AbbVie and Allergan, and most recently between Mylan and Pfizer, which would create the world's largest generic pharmaceutical firm. This of course is against a backdrop of soaring drug prices, declining innovation, and reports that 58 million adults are unable to afford needed medications.<sup>1</sup>

Throughout its recent history, the FTC has challenged a total of 67 pharmaceutical mergers, with a combined worth of \$900 billion dollars, striking settlement deals through divestitures of products, as opposed to litigation, in all but one proposed merger.<sup>2</sup> The FTC's recent approval of Mylan's acquisition of Pfizer's generic drug business, which requires divestiture of seven individual products is the latest example, in the words of Commissioner Rohit Chopra, of the FTC's "myopic" approach towards pharmaceutical mergers.<sup>3</sup>

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<sup>1</sup> See Dan Witters, *Millions in U.S. Lost Someone Who Couldn't Afford Treatment*, GALLUP (Nov. 12, 2019), <https://news.gallup.com/poll/268094/millions-lost-someone-couldn-afford-treatment.aspx>.

<sup>2</sup> See Diana L. Moss, *From Competition to Conspiracy: Assessing the Federal Trade Commission's Merger Policy in the Pharmaceutical Industry*, AMERICAN ANTITRUST INSTITUTE, 10 (Sept. 2020), [https://www.antitrustinstitute.org/wp-content/uploads/2020/09/AAI\\_PharmaReport2020\\_9-11-20.pdf](https://www.antitrustinstitute.org/wp-content/uploads/2020/09/AAI_PharmaReport2020_9-11-20.pdf).

<sup>3</sup> See Statement of Commissioner Rohit Chopra & Commissioner Rebecca Kelly Slaughter In the Matter of Pfizer Inc. / Mylan N.V., Comm'n File No. 1910182, 5 (Oct. 30, 2020),

It would be one thing if the acquisitions resulted in deterring future anticompetitive conduct and decreased drug prices for consumers. However, there is growing consensus that increases in drug prices can be attributed, in part, to mergers and consolidation in the industry.<sup>4</sup> A U.S. Government Accountability (GAO) study found that less competition “is associated with higher drug prices for generic drugs.”<sup>5</sup> Additionally, an analysis by the American Antitrust Institute found that many of the drug companies most active in merger and acquisitions are defendants in federal, state, and private civil and criminal antitrust cases, providing “strong evidence that the FTC’s policy of settling all challenged mergers with targeted divestiture remedies has created market conditions that have led to the exercise of market power by dominant firms and oligopolies of firms.”<sup>6</sup> For example, both Pfizer and Mylan are defendants in lawsuits alleging generic drug price fixing and market allocation collusion.<sup>7</sup>

The COVID-19 pandemic and resulting public health emergency has highlighted the long-established fault lines in America’s pharmaceutical industry—soaring drug prices and declining innovation. The Committee is uniquely positioned to contribute to this discussion by holding a hearing to examine federal antitrust regulators’ approach of approving pharmaceutical mergers subject to divestitures and determine whether changes are needed. In the COVID-19 environment, it is critical that there is robust competition within our pharmaceutical market; therefore, it is vital for the Committee to determine whether the FTC’s standard approach of pharmaceutical divestitures is an appropriate remedy to address anticompetitive harms.

Thank you for your consideration of this request.

Sincerely,



Joe Neguse  
Vice Chair  
Subcommittee on Antitrust, Commercial and  
Administrative Law

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[https://www.ftc.gov/system/files/documents/public\\_statements/1582382/191\\_0182\\_pfizer-mylan\\_-\\_dissenting\\_statement\\_of\\_commr\\_chopra\\_and\\_slaughter\\_1.pdf](https://www.ftc.gov/system/files/documents/public_statements/1582382/191_0182_pfizer-mylan_-_dissenting_statement_of_commr_chopra_and_slaughter_1.pdf).

<sup>4</sup> See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-18-40, INDUSTRY PROFITS, RESEARCH AND DEVELOPMENT SPENDING, AND MERGER AND ACQUISITION DEALS (2017).

<sup>5</sup> *Id.* at Highlights.

<sup>6</sup> See *supra* note 2, at 3.

<sup>7</sup> Diane Bartz & Jonathan Stempel, *U.S. States Accuse 26 Drugmakers of Generic Drug Price Fixing in Sweeping Lawsuit*, REUTERS, (June 10, 2020), <https://www.reuters.com/article/us-usa-drugs-antitrust-lawsuit/u-s-states-accuse-26-drugmakers-of-generic-drug-price-fixing-in-sweeping-lawsuit-idUSKBN23H2TR>.